STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-15-618

FLORANIA DA SILVA MEDEIROS
APPELLANT/DEFENDANT

VS.

JAMES-ROBERT G. CURTIS
APPELLEE/PLAINTIFF

ON APPEAL FROM THE MAINE DISTRICT COURT
(BANGOR)

BRIEF OF APPELLANT:

FLORANIA DA SILVA MEDEIROS

Christopher R. Largay, Esq.
Largay Law Offices, P.A.
293 State Street
Bangor, ME 04401
207-947-4529

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution

Statutes

Maine Rules of Civil Procedure

STATEMENT OF FACTS

Florania Da Silva Medeiros and James-Robert G. Curtis are the parents of [Daughter] (d/o/b). Mr. Curtis is a merchant marine. For several years, Mr. Curtis has been working out of state for approximately eight months out of the year. Ms. Medeiros has always been the primary caregiver for [Daughter]. Ms. Medeiros is a dual citizen of the United States and Brazil. Ms. Medeiros' mother resides in Brazil. Ms. Medeiros makes annual trips to Brazil to visit her mother and family. [Daughter] is close to both her maternal grandmother and her paternal grandparents. [Daughter] has never considered her paternal grandparents to be her parents. (*See* Divorce Judgment and Order on Motion to Enforce and Motion to Modify.)

On March 1, 2011, April 21, 2011, and April 27, 2011, the District Court (Judge Patrick Ende) held a contested hearing regarding the parties' divorce. The issues for the divorce hearing included whether Ms. Medeiros could take [Daughter] on her annual trips to Brazil and whether the paternal grandparents should be awarded third party visitation rights. On September 9, 2011, the District Court issued a Divorce Judgment. The Divorce Judgment granted Ms. Medeiros the right to take [Daughter] to Brazil. The Divorce Judgment did not award

third party visitation rights to the paternal grandparents. Mr. Curtis filed a motion requesting the District Court to reconsider its ruling on the third party visitation rights issue. The District Court denied this motion on January 5, 2012. On April 26, 2012, the District Court issued an Amended Divorce Judgment. The Amended Divorce Judgment retained the provisions allowing for Brazil trips and denying visitation rights to the paternal grandparents.

Ms. Medeiros was able to take [Daughter] on one trip to Brazil. After Ms. Medeiros returned from Brazil, Mr. Curtis refused to cooperate in issuing an updated passport for [Daughter].

On February 20, 2014, Ms. Medeiros filed a Motion to Modify to address contact issues and to require Mr. Curtis to sign the necessary paperwork for trips to Brazil. On June 12, 2014, Ms. Medeiros filed a Motion to Enforce to require Mr. Curtis to cooperate in allowing the trips to Brazil. (*See* Order on Motion to Enforce and Motion to Modify.)

The District Court appointed Diane Tennis, PhD as Guardian ad Litem. On September 16, 2015, the District Court (Judge Gregory Campbell) held a contested hearing. The *only* witnesses were the parties and the Guardian ad Litem. The parties reached agreement

on most of the contact issues. The major issues at the hearing were the annual trips to Brazil and Mr. Curtis' renewed request that the paternal grandparents be awarded visitation rights. The Guardian ad Litem recommended that [Daughter] be allowed to go on annual trips to Brazil. The Guardian ad Litem recommended that the paternal grandparents be allowed visitation one weekend per month on the months when Mr. Curtis was working.

On September 18, 2015, the District Court issued an Order on Motion to Enforce and Motion to Modify. The District Court found that Mr. Curtis worked a rotating shift of 60 days on and 30 days off. The District Court found that [Daughter] was happy and emotionally well-adjusted. The District Court found that [Daughter] loved both of her parents but that she was closer to Ms. Medeiros, who has always been her primary caregiver. The District Court found that [Daughter] misses her father when he is away and that she enjoys spending time with her paternal grandparents. The District Court fonnd that Ms. Medeiros recognizes that [Daughter] has a close relationship with her paternal grandparents. The District Court found that Ms. Medeiros has allowed the paternal grandparents to have contact with [Daughter] in the past and that she agrees that the paternal grandparents should

continue to have a relationship with [Daughter]. The District Court found that Ms. Medeiros does not want to be required to allow visitation with the paternal grandparents. See Order on Motion to Enforce and Motion to Modify.

Despite finding that Ms. Medeiros has always been [Daughter]'s primary care provider, the District Court awarded visitation rights to the paternal grandparents one weekend per month when Mr. Curtis is working out of state. The District Court denied the Motion to Enforce, finding that the Divorce Judgment only allowed one visit to Brazil and did not provide for annual trips to Brazil. The District Court modified the Divorce Judgment to allow trips to Brazil on an every other year basis. The District Court found that Ms. Medeiros would keep [Daughter] safe in Brazil but that some safety issues remained, which would be alleviated by reducing the number of trips.

In response to the Order, Ms. Medeiros filed a Motion to Reconsider and Motion for Further Factual Findings of Fact and Conclusions of Law regarding the paternal grandparent visitation and Brazil trip issues. On November 20, 2015, the District Court issued an Order on Defendant's Motion for Reconsideration and Motion for Further Factual Findings and Conclusions of Law. The District Court

reiterated its factual findings but declined to reconsider its Order. The District Court did not find that the paternal grandparents had ever been de facto parents. The Appellant filed a timely appeal.

STATEMENT OF THE ISSUES

1. **DOES THE AWARD OF VISITATION RIGHTS TO THE PATERNAL GRANDPARENTS OVER THE MOTHER'S OBJECTION VIOLATE THE MOTHER'S FUNDAMENTAL RIGHT TO PARENT WHEN THE PATERNAL GRANDPARENTS HAVE NEVER ACTED AS DE FACTO PARENTS AND THE MOTHER IS A FIT PARENT?**

ARGUMENT

I. SUMMARY/STANDARD OF REVIEW.

This appeal involves multiple issues, which involve different standards of review. The mother contends that the District Court erred when it awarded visitation rights to the paternal grandparents pursuant to 19-A M.R.S. § 1653(2)(B). The District Court did not find that the paternal grandparents were de facto parents. In fact, the District Court found that the mother had always been the primary caregiver of [Daughter]. The mother contends that the District Court's order violates her substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and that the District Court improperly applied 19-A M.R.S. § 1653(2)(B). The District Court's legal interpretation is reviewed de novo by the Law Court. See *Estate of Jacobs*, 1998 ME 233, ¶ 4, 719 A.2d 523, 524. The mother also contends that the District Court erred in finding that a substantial change of circumstances had occurred warranting the award of third party visitation. See *Bulkley v. Bulkley*, 2013 ME 101, 82 A.3d 116

II. THE DISTRICT COURT ERRED IN AWARDING THIRD PARTY VISITATION RIGHTS.

Pursuant to 19-A M.R.S. § 1653(2)(B), the District Court ordered

that the paternal grandparents would have a right to visitation with [Daughter] once per month when the Appellee (the father) was out of state. The District Court ordered this provision over the mother's objection. The District Court's decision is flawed for multiple reasons.

A. The Court Erred in not applying the proper test regarding Standing

In its Order on Defendant's Motion for Further Findings of Fact and Conclusions of Law the District Court made extensive reference to the Grandparents Visitation Act, 19-A M.R.S. 1801 et seq., and Jon Levy, *Maine Family Law. Order on Motion for Further Findings,* p. 2. The Court made explicit reference to the normal procedure, whereby the grandparents are to file a petition and submit affidavits alleging a sufficient existing relationship with tbe child. The Court even acknowledged that:

> in this case, grandparents did not file a motion to intervene nor did the file a petition with an affidavit to estahlish standing. As the defendant correctly points out, grandparents did not even testify in tbis matter. Nonetheless, the court believes that it was well within its discretion to award limited contact with the minor child to the paternal grandparents pursuant to 19-A §1653(2)(B).

Id p. 3.

The District Court completely failed to acknowledge or make reference to the requirement the Court establish, as a preliminary matter of standing, that any party seeking that the grandparents be awarded third party visitation rights bears the burden of making a prima facie showing that those grandparents had de facto parent status. Philbrook v. Theriault, 2008 ME 152, ¶ 22, 957 A.2d 74, 79. ("[S]tanding to seek parental rights and responsibilities requires a prima facie demonstration of *de facto* parent status").

The District Court went on to hold that "based on the evidence presented, the paternal grandparents *would* clearly *have been able to* establish standing either to intervene pursuant to Rule 24 or pursuant to the Grandparent Visitation Act." *Order on Motion for Further Findings*, p. 3-4. (Emphasis added). This is clear error. The Court never even addressed the issue of *de facto* parent status. To the extent that it may have addressed this standard, it concluded only that the child had a very close relationship with the grandparents. This is not sufficient to even allege a *de facto* parent relationship, let alone support a legal finding that such a relationship existed.

It is an issue of first impression whether the standard which the Law Court has held applies in cases where the third parties themselves have petitioned the Court for visitation also applies in cases where a Parent asks the court to award third party visitation.

Defendant contends, as an initial matter, that Plaintiff does not even have the initial right to petition the Court to award visitation to someone else. He does not represent the grandparents. No attorney, certainly not Appellee's attorney, entered an appearance on behalf of the grandparents. He cannot purport to represent their interests; he is not their attorney. The District Court should not even have considered the request to award visitation to third parties, and certainly not over Defendant's objection.

Even if, however, it were appropriate for the District Court to have considered Plaintiff's request for third party visitation, the Court should have applied the same standard that would apply if the grandparents themselves had been directly involved. The Court should have made an initial determination of whether the grandparents were *de facto* parents. To hold otherwise would make it easier for grandparents who did not participate at all in the

proceedings a better opportunity to receive visitation than grandparents to actively participated and represented their own interests. This result is nonsensical; it would create an incentive for third parties to seek visitation by using another party as their mouthpiece, and would violate the concepts of equal protection.

Finally, the Court's order is internally inconsistent and legally incorrect. The Court referenced the fact that "[f]orcing parents to defend against a claim for grandparent visitation is itself an infringement of their fundamental right to make decisions concerning the custody and control of their children." *Order on Motion for Further Findings*, p. 3. Then, on the very next page, the Court holds that the Court's award of third party visitation itself is not a significant interference with the mother's rights. The award of third party visitation infringes on a parent's fundament rights by its very nature. Conlogue v. Conlogue, 2006 ME 12, ¶ 12, 890 A.2d 691, 696. ("[A] court order requiring grandparent visitation against the wishes of a parent constitutes an infringement of that fundamental right. *Troxel,* 530 U.S. at 67, 120 S.Ct. 2054 (plurality); *Rideout,* 2000 ME 198, ¶ 21, 761 A.2d at 300").

There is no exception where the party making the request is also a parent. The language is explicit that it is the parent's objection which creates the infringement, not *both* parents' objection. This is supported by recorded decisions. *See Eaton v. Paradis*, 2014 ME 61, 91 A.3d 590. The District Court was required to apply strict scrutiny, even to the initial request for grandparent visitation, regardless of who requested it, and erred when it considered the request at all. The Court also erred in granting the request, and in concluding that the award did not infringe on Defendant's fundamental rights. For all these reasons, the District Court's award of third party visitation should be reversed.

B. Third Party visitation cannot be awarded absent a finding of de facto status.

In *Davis v. Anderson*, 2008 ME 125, 953 A.2d 1166, the Law Court held that grandparents seeking visitation under 19-A M.R.S. § 1653(2)(B) had to meet the same de facto parent standard as required under the Grandparents Visitation Act. In vacating a District Court order allowing intervention, the Law Court stated:

> Both *Passalaqua* and *Conlogue* mandate the protection of parents' fundamental rights in the context of potentially burdensome litigation brought by grandparents requesting

> contact. When third parties, including grandparents, petition for contact or for parental rights and responsibilities pursuant to section 1653(2)(B) or (C), the parents' rights must be protected at least as well as they are when grandparents pursue an action for visitation pursuant to section 1803. For that reason, a request for access to children pursuant to 19–A M.R.S. § 1653 must be considered with at least the same level of scrutiny. In an action brought under the Grandparents Visitation Act, grandparents must make an initial showing of the urgent reasons that justify their standing. *Conlogue*, 2006 ME 12, ¶ 20, 890 A.2d at 699; see *Rideout*, 2000 ME 198, ¶ 24, 761 A.2d at 301. In *Rideout* we held that urgent reasons exist when grandparents have acted as de facto parents. 2000 ME 198, ¶ 25, 761 A.2d at 301. No other urgent reasons have yet been identified. *Davis*, 2008 ME 125, ¶ 14 and 15, 953 A.2d 1166, 1170-1171.

In the Order on Motion to Enforce and Motion to Modify, the District Court found that the visitation requirement would not interfere with the mother's fundamental right to parent her own child nor impinge on the mother's right to make decisions regarding her child. The Appellant filed a Motion to Reconsider and a Motion for Further Findings of Fact and Conclusions of Law. The Appellant argued that the visitation requirement did violate her fundamental right to parent. The Appellant sought factual findings that the paternal grandparents were not de facto parents. In ruling on the Motion To Reconsider and Motion for Further Findings of Fact and Conclusions of Law, the District Court reiterated its conclusion that the granting of rights of visitation to the parental grandparents would

not infringe on the mother's fundamental right to parent nor infringe on her right to make decisions regarding her own child. The District Court also found that grandparents would meet the standing requirements of M.R.Civ.P. Rule 24 or the Grandparents Visitation Act. The District Court did not issue a factual finding that the paternal grandparents had been de facto parents. The District Court did not make any further factual findings other than noting that the paternal grandparents had a close relationship with [Daughter]. In the Order on Motion to Enforce and Motion to Modify, the District Court found that the mother had always been the primary caregiver for [Daughter].

The District Court's conclusion that the mother's fundamental rights to parent and make decisions regarding her child are not violated by awarding rights of contact to the paternal grandparents is flat out wrong. The United States Supreme Court and the Maine Law Court have both stated that awarding rights of contact to a grandparent against the parent's wishes violates the parent's fundamental right to parent his or her child.

In *Conlogue v. Conlogue*, 2006 ME 12, 890 A.2d 691, the Law Court stated:

> It is well established that, pursuant to the substantive due process component of the Fourteenth Amendment, parents have a fundamental liberty interest in making decisions concerning the care, custody, and control of their children. E.g., *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Scott S.*, 2001 ME 114, ¶ 20 n. 12, 775 A.2d 1144, 1151. It follows that a court order requiring grandparent visitation against the wishes of a parent constitutes an infringement of that fundamental right. *Troxel*, 530 U.S. at 67, 120 S.Ct. 2054 (plurality); *Rideout*, 2000 ME 198, ¶ 21, 761 A.2d at 300 (plurality). *Conlogue*, 2006 ME 12, ¶ 12, 890 A.2d 691, 696.

The District Court noted that the father was in favor of his parents being awarded visitation rights. This is true. However, the mother's fundamental liberty interest is still infringed when the District Court awards visitation rights to a third party over her objection. In *Eaton v. Paradis*, 2014 ME 61, 91 A.3d 590, the Law Court found that the fundamental right to parent was implicated even though the father supported the paternal grandmother's complaint.

Since the mother's fundamental right to parent is involved, strict scrutiny must be applied. As noted in *Conlogue*, "Such an infringement is subject to strict scrutiny, and must be narrowly tailored to serve a compelling state interest. *Flores*, 507 U.S. at 301-02, 113 S.Ct. 1439; *Rideout*, 2000 ME 198, ¶ 19, 761 A.2d at 299-300 (plurality)." *Conlogue*, 2006 ME 12, ¶ 16, 890 A.2d 691, 697.

Because 19-A M.R.S. § 1653(2)(B) implicates a fundamental right to parent, the use of the statute can only be upheld when it meets the requirements of strict scrutiny. The Law Court has stated repeatedly that the only time it has found strict scrutiny to have been met to allow third party visitation under 19-A M.R.S. § 1653(2)(B) or under the Grandparents Visitation Act is when the grandparents have acted as de facto parents. See *Davis*, 2008 ME 125, ¶ 14 and 15, 953 A.2d 1166, 1170-1171. See *Katie v. Brandi M.*, 2011 ME 131, ¶ 3, 32 A.3d 1047, 1048. See *Pitts v. Moore*, 2014 ME 59, ¶ 15, 90 A.3d 1169, 1176.

In this case, the District Court erred when it concluded that the paternal grandparents met the standing requirements for third party visitation. Being a close or even very close grandparent is not enough to be considered a de facto parent. Providing care for a child is not enough to be a de facto parent. In *Philbrook v. Theriault*, 2008 ME 152, 957 A.2d 74, the Law Court stated:

> We have never extended the de facto parent concept to include an individual who has not been understood to be the child's parent but who intermittently assumes parental duties at certain points of time in a child's life. Rather, when we have recognized a person as a de facto parent, we have done so in circumstances when the individual was understood and acknowledged to be the child's parent both by the child and by

the child's other parent. See *C.E.W.*, 2004 ME 43, ¶¶ 2–4, 11, 13, 845 A.2d at 1147, 1151; *Stitham v. Henderson*, 2001 ME 52, ¶ 17, 768 A.2d 598, 603.

For instance, we held that a man was a de facto parent when he raised a child as his own for several years beginning upon the child's birth and later discovered that he was not the child's biological father through paternity testing. *Stitham*, 2001 ME 52, ¶¶ 2–3, 17, 768 A.2d at 599–600, 603. In that case, the child, the mother, and the de facto father all behaved as if the de facto father was the child's father, biologically and emotionally, until blood testing proved otherwise. *Id.* He and the child had a parent-child relationship, and he had been the child's legal father. *Id.*

In another case, we held that a woman who had functioned as the mother of her partner's biological child for years, and who, by agreement with the biological parent, was raising the child as her own son, was also qualified as a de facto parent. *C.E.W.*, 2004 ME 43, ¶¶ 2–4, 11, 13, 845 A.2d at 1147, 1151. In both *Stitham* and *C.E.W.*, the individual held to be a de facto parent served in a parental capacity, was understood by the child to be a parent, functioned as the parent of the child, and was accepted by the biological parent as a parent.

Here, the Philbrooks certainly demonstrated that they provided needed care for the boys, and as the court observed, that they have been "loving and helpful grandparents," but they were never thought to be the boys' parents. Nor were they invited to be treated as parents by the Theriaults as in *C.E.W.* Rather, the Philbrooks functioned as caring grandparents for their grandsons during what was obviously a difficult period for the boys' parents. The children were very fortunate to have had the love and stability that their grandparents provided during their parents' periods of turmoil. In the end, however, the Philbrooks' willingness to provide care for their grandsons was commendable, but the care they provided was not sufficient to transform them into the boys' de facto parents. The court did not, therefore, err in dismissing the Philbrooks' complaint for

> lack of standing based on a finding that the Philbrooks had failed to establish a prima facie case that they were de facto parents. *Philbrook v. Theriault*, 2008 ME 152, ¶ 23-26, 957 A.2d 74, 79-80.

In *Pitts v. Moore*, 2014 ME 59, 90 A.3d 1169, the Law Court established the standard for determining de facto parenthood. The Law Court stated:

> Instead, in the absence of legislation in this area, we cleave to the standard we have already announced. An individual seeking parental rights as a de facto parent must therefore show that (1) he or she has undertaken a "permanent, unequivocal, committed, and responsible parental role in the child's life," *Philbrook*, 2008 ME 152, ¶ 22, 957 A.2d 74 (quoting *C.E.W.*, 2004 ME 43, ¶ 14, 845 A.2d 1146), and (2) that there are exceptional circumstances sufficient to allow the court to interfere with the legal or adoptive parent's rights. Because the fundamental rights of a biological or adoptive parent are at issue and strict scrutiny must be applied to any interference with that right, see *Rideout*, 2000 ME 198, ¶¶ 18– 19, 761 A.2d 291, and because the establishment of parental rights is no less permanent than the termination of parental rights, see 22 M.R.S. § 4055(1)(B)(2), the petitioner must make those showings by clear and convincing evidence. *Pitts v. Moore*, 2014 ME 59, ¶ 27, 90 A.3d 1169, 1179.

The evidence did not establish that the paternal grandparents ever had a parent-child relationship with [Daughter]. No evidence was presented that [Daughter] ever considered the paternal grandparents to be her parents. In the Guardian ad Litem report, the Guardian Ad Litem stated:

> [Daughter] is emotionally close with her paternal grandparents, with whom she spends a significant amounts (sic) of time when she is in her father's care. These individuals are irrevocably connected in [Daughter]'s mind with her father whom she described as missing "lots" when he is working. Seeing her paternal grandparents while her father is out of town working appears reassuring to [Daughter] and, in some ways functions as a "substitute" to seeing her father. See Guardian Ad Litem Report, p. 5.

In her testimony, the Guardian Ad Litem did not state that [Daughter] had ever viewed her paternal grandparents as her parents. The Guardian ad Litem testified, "The grandparents in some ways function as a kind of surrogate parent, and they are a substitute or a reminder of him that's really, as I have determined, reassuring and comforting to D." See Transcript, p. 74. The paternal grandparents remind [Daughter] of her father, which is certainly natural. However, this reminder of the father does not transmute into de facto parent status. The evidence does not meet the test laid out in *Pitts v. Moore*, 2014 ME 59, 90 A.3d 1169.

The relationship between [Daughter] and her paternal grandparents is even less intense than the relationship in *Philbrook v. Theriault*, 2008 ME 152, 957 A.2d 74. As noted above, the grandparents in *Philbrook* provided direct primary care for the grandchildren at various periods of time. Providing primary care for

the children for intermittent periods is not enough to meet the test. The third party must have been thought of as a parent. [Daughter] has not considered the paternal grandparents to be her parents. Rather, her paternal grandparents remind her of her father, who is actually one of her parents. As noted above, the District Court affirmatively found that the mother has always been the primary caregiver of [Daughter]. The District Court's conclusion that the paternal grandparents met the standing requirements of 19-A M.R.S. § 1653(2)(B) is clearly wrong. The award of third party visitation rights under 19-A M.R.S. § 1653(2)(B) is unconstitutional as applied in this case.

C. Third Party Visitation cannot be awarded when the mother is a fit parent.

In the Order on Motion to Enforce and Motion to Modify, the District Court found that it was in the best interests of [Daughter] to have contact with her paternal grandparents "but also that it is necessary to protect her from a psychological perspective". See Order on Motion to Enforce and Motion to Modify, p. 8.

It is important to note that there is no evidence that [Daughter] has been psychologically harmed since her parents' separation. Dr.

Tennies testified that [Daughter] was "psychologically intact" and "well rounded". See Transcript, pp. 91 and 136. The District Court found that [Daughter] was doing well under difficult circumstances. The District Court found that [Daughter] is happy and well adjusted. See Order on Motion to Enforce and Motion to Modify, p. 2.

The District Court also made findings that the mother recognizes that [Daughter] has a close relationship with the paternal grandparents. The District Court found that the mother has allowed the paternal grandparents to have contact with [Daughter]. The District Court found that the mother believes that the paternal grandparents should continue to have a relationship with the paternal grandparents but does not want to be obligated to allow visitation. See Order on Motion to Enforce and Motion to odify, p. 8.

The District Court did not make any findings that the mother was an unfit parent. Both the Maine Law Court and the United States Supreme Court have stated that there is a presumption that fit parents act in the best interests of their children. See *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), *Parham v. J.R.*, 442 U.S. 584, 99 S.Ct. 2493 (1979), *Rideout v. Riendeau*, 2000 ME 198, 761 A.2d 291, *Guardianship of Jeremiah T.*, 2009 ME 74, 976 A.2d

955, and *Guardianship of Jewel M.*, 2010 ME 80, 2 A.3d 301.

As a fit parent, it is presumed that the mother will allow contact with the paternal grandparents so that [Daughter] does not snffer any psychological harm. However, as a fit parent, she shonld be allowed to decide how and when such visitation shall occur. It is not mere speculation to assume that the mother will allow contact with paternal grandparents. The District Court has found that the mother has historically allowed the paternal grandparents to have contact with [Daughter]. [Daughter] has not suffered any psychological issues. As noted above, the District Court found that [Daughter] is happy and well adjusted.

The credit for [Daughter]'s psychological health must go to the mother in this case. For most of the year, the mother functions as a single parent. The District Court found that the father works a shift of 60 days on and 30 days off. See Order, p. 1. The Guardian ad Litem testified that the father has been absent six to eight months out of the year for the past several years. The Guardian ad Litem testified that the mother has single handedly raised [Daughter] during those periods. The Guardian ad Litem also testified that the mother should receive credit for [Daughter]'s wellbeing. See Transcript, pp. 136-137.

D. A substantial change of circumstances regarding third party visitation did not occur.

The issue of the award of paternal grandparent visitation was previously litigated by the father. When the parties were divorced the father sought an award of third party visitation for his parents. The parties testified and briefed the issues. In the Divorce Judgment, the District Court did not award a right of contact but did encourage the mother to maintain and facilitate contact when the father was working out of state. The father filed a motion to require the mother to allow contact with the paternal grandparents, which the District Court denied.

The Divorce Judgment was granted on September 9, 2011. The father did not establish what substantial change of circumstances occurred that warranted an award of third party visitation. Certainly, the father's work schedule is not new. The father has been working as a merchant marine for over ten years. See Transcript, pp. 153-154. He was working extensively out of state at the time of the divorce hearing. The relationship with the paternal grandparents is not new. During the divorce hearing, the father was arguing that the paternal grandparents had a close relationship with [Daughter]. The District

Court acknowledged this relationship by encouraging the mother to allow contact in the Divorce Judgment. If the relationship between [Daughter] and the paternal grandparents actually became closer over the past five years, then it clearly would be result of the mother allowing contact since the father is working out of state approximately eight months out of the year.

The District Court specifically noted that it was taking judicial notice of the pleadings in the case. See Transcript, p. 215. In determining whether a substantial change of circumstances had occurred, the District Court needed to compare the situation at the time of the divorce hearing with the current situation. The pleadings and the Divorce Judgment establish that the evidence and the arguments about third party visitation remained the same. The District Court erred in finding a substantial change of circumstances occurred that warranted an award of third party contact. The only change that occurred was the presiding Judge.

CERTIFICATE OF SERVICE

I, Christopher Largay, Esq., of Largay Law Offices, P.A., Attorney for Florania Da Silva Medeiros, hereby certify that two conformed copies of the foregoing Brief of Appellant have been mailed through the regular course of the United States Mail, postage prepaid, this 23rd day of March, 2016, to the following:

Jason Barrett, Esq.
Eaton Peabody
P.O. Box 119
Ellsworth, ME 04605

Diane Tennies, PhD
115 Franklin Street, Suite 1A
Bangor, ME 04401

Dated: March 23rd, 2016

Christopher Largay, Esq.,
Bar No. 7348
Attorney for Appellant
Largay Law Offices, P.A.
293 State Street
Bangor, ME 04401
Telephone (207) 947-4529